

May 1, 2023

Larry S. Royster
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2022-03 – Proposed Amendment of Rule 1.109 of the Michigan Court Rules

Dear Clerk Royster:

At its April 28, 2023 meeting, the Board of Commissioners of the State Bar of Michigan (“SBM”) considered ADM File No. 2022-03. The Board voted unanimously to support the amendment of Rule 1.109.

Ensuring that parties and attorneys are treated fairly and with respect—regardless of their gender identity or expression—is an access to justice issue. When a court disrespects the personal pronouns of a party or attorney who appears before it, the public’s confidence in the integrity and impartiality of the judiciary is eroded. When done intentionally or maliciously, such conduct violates a judge’s duty to “treat every person fairly, with courtesy and respect” without regard to any protected personal characteristic.¹ Unfortunately, based on the experience shared by many members of the Bar during SBM’s review of this proposal, that judicial duty, without greater specificity, has been insufficient to ensure fair and respectful treatment of transgender and nonbinary individuals in too many Michigan courts. Requiring judges to use the personal pronouns of parties and attorneys, when identified, will provide that necessary specificity. Experience has shown that anything short of a requirement will be inadequate to the task of ensuring fair and respectful treatment for all.

At the same time, those judges already striving to ensure that their courts operate in a fair and respectful manner encounter difficulty in identifying the appropriate form of address for a party or attorney appearing before them. By permitting parties and attorneys to include their pronouns in the name section of a document caption, the proposed amendment of Rule 1.109 will create a clear, standardized process for informing the court of an individual’s appropriate form of address.

The importance of this matter within the Bar is evident from the uncommonly high number of State Bar committees and sections that have reviewed the amendment to Rule 1.109 and opted to adopt public policy positions on the proposal. The Access to Justice Policy Committee, Civil Procedure & Courts Committee, Criminal Jurisprudence & Practice Committee, Diversity & Inclusion Advisory Committee, and Justice Initiatives Committee, as well as the Appellate Practice, Children’s Law,

¹Code of Judicial Conduct, Canon 2(B) and 3(A)(14). Canon 3(A)(14) also requires a judge, to the extent possible, to “require staff, court officials, and others who are subject to the judge’s direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the court.”

Criminal Law, Family Law, LGBTQA Law, and Prisons & Corrections Sections all supported ADM File No. 2022-03. The Religious Liberty Law Section opposed.²

In its review of these committee and section positions, and comments submitted to the Court, the Board considered claims that the proposed rule is subject to ambiguity, confusion, and the potential for misuse of pronouns to disrupt court proceedings but believes these concerns to be both exaggerated and easily addressed by the proposed rule's provision permitting a court to use an individual's name "or other respectful means of [address]." Therefore, the Board urges the Court to adopt a clear, sensible rule to ensure that Michigan courts treat every person "fairly, with courtesy and respect" by approving the proposed amendment of Rule 1.109.

Thank you for the opportunity to comment on the proposed amendment.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
James W. Heath, President

² Article VIII, Section 7(2) of the Bylaws of the State Bar of Michigan prohibit a section from advocating a public policy position that is inconsistent with State Bar policy, unless expressly authorized to do so by the State Bar. In this case, the Board voted to authorize all sections to advocate their positions, including inconsistent positions, so that the Court would have the benefit of the full range of views within the Bar.